

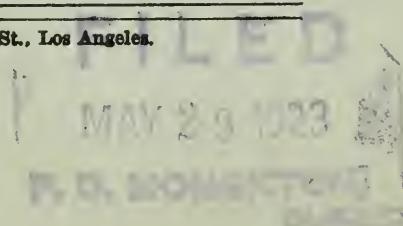
No. 4041 15

United States
Circuit Court of Appeals
For the Ninth Circuit.

P. PIACENZA,
Plaintiff in Error,
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.



No.

**United States
Circuit Court of Appeals
For the Ninth Circuit.**

P. PIACENZA,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

**Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys:

For Plaintiff in Error:

THEODORE GOTTSANKER, Esq.,
Equitable Bank Building, Los Angeles, California.

For Defendant in Error:

JOSEPH C. BURKE, Esq.,
United States Attorney, and
MACK MEADER,
Assistant United States Attorney.

United States of America, ss.

To The United States of America and Joseph C. Burke, United States Attorney, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 26th day of May, A. D. 1923, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause wherein you are defendant in error and P. Piacenza is plaintiff in error to show cause, if any there be, why the judgment rendered against the plaintiff in error, P. Piacenza, in the writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable BENJAMIN F. BLEDSOE United States District Judge for the Southern District of California, this 26th day of April, A. D. 1923, and of the Independence of the United States, the one hundred and forty-seventh.

Bledsoe

U. S. District Judge for the Southern District of California.

Service of a copy of the within writ is hereby acknowledged this 26th day of April 1923.

Joseph C. Burke

Joseph C. Burke, U. S. Atty.

3948 Crim IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT P Piacenza, Plaintiff in Error vs. The United States of America, Defendant in Error Citation FILED APR 26 1923 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy C L R B 8/84

United States of America, ss.

The President of the United States of America,

To the Judges of the District Court of the United States, for the Southern District of California,
GREETING:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court, before you between P. Piacenza, plaintiff in error and The United States of America, defendant in error a manifest error hath happened, to the great damage of the said P. Piacenza, plaintiff in error as by his complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 26th day of May next, in the said United States Circuit Court of Appeals, to be there and then held, that the record and

proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS, the HON WILLIAM HOWARD TAFT, Chief Justice of the United States, this 26th day of April in the year of our Lord one thousand nine hundred and twenty three and of the Independence of the United States the one hundred and forty seventh

[Seal] CHAS. N. WILLIAMS

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By R S Zimmerman,
Deputy Clerk.

The above writ of error is hereby allowed.

Bledsoe
Judge.

I hereby certify that a copy of the within Writ of Error was on the 26th day of April, 1923, lodged in the office of the Clerk of the said United States District Court, for the Southern District of California, Southern Division, for said Defendants in Error.

CHAS N WILLIAMS

Clerk of the District Court of the United States for the Southern District of California.

By R S Zimmerman
Deputy Clerk.

3948 United States Circuit Court of Appeals for the NINTH CIRCUIT P. Piacenza Plaintiff in Error

vs. The United States of America Defendant in Error
Writ of Error FILED APR 26 1923 CHAS. N.
WILLIAMS, Clerk By R S Zimmerman Deputy

Form No. 689.

In the DISTRICT Court of the United States, For
the SOUTHERN District of CALIFORNIA
SOUTHERN DIVISION

THE UNITED STATES

vs.

P. PIACENZA and FRANK MORETTI,

.....
.....

INFORMATION. VIOLATING SECTION 21 &
25 Title II of the National Prohibition Act of October
28, 1919

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF CALIFORNIA } ss:

Be it Remembered, That JOSEPH C. BURKE
the Attorney of the United States for the Southern
District of California who prosecutes in behalf and
with the authority of the United States, comes here
in person into Court at this January Term thereof,
and for the United States gives the Court to under-
stand and be informed that one P. PIACENZA and
FRANK MORETTI, whose full and true names are
other than as herein stated, are to affiant unknown,
late of the Southern Division of the Southern District
of California, heretofore, to wit: on or about the 29th
day of November, 1921, at Belvidere, County of Los

Angeles, within said division and district, and within the jurisdiction of the United States and this Honorable Court, did knowingly, wilfully and unlawfully maintain a common nuisance, to-wit: a room, building and place on Riverside Street, Belvidere, County of Los Angeles, where intoxicating liquors then and there containing alcohol in excess of one half of one percent by volume, were manufactured, kept, sold and bartered for beverage purposes; in violation of Section 21, Title II of the National Prohibition Act of October 28, 1919.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

SECOND COUNT.

And the said Joseph C. Burke, who prosecutes for the United States as aforesaid, does further give the Court to understand and be informed:

That P. PIACENZA and FRANK MORETTI, whose full and true names are other than as herein stated, to affiant unknown, late of the Southern Division of the Southern District of California, heretofore, to wit: on or about the 29th day of November, 1921, at Belvidere, County of Los Angeles, within said division and district, and within the jurisdiction of the United States and this Honorable Court, did knowingly, wilfully and unlawfully have in their possession certain property and apparatus designed for the manufacture of intoxicating liquor for beverage purposes containing alcohol in excess of one half of one percent, to wit: two stills, 50 gallons mash destroyed, five

gallons moonshine and tools; in violation of Section 25, Title II of the National Prohibition Act of October 28, 1919.

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Whereupon, the said United States Attorney for the District aforesaid prays the consideration of this Court here in the premises, and that due process of law may be awarded against the said P. PIACENZA and FRANK MORETTI defendants, in this behalf to make their answer to the United States touching and concerning the premises.

Dated at Los Angeles, this 29th day of March, A. D. 1922.

Joseph C. Burke
United States Attorney for the Southern District of California

Mark L. Herron
Assistant United States Attorney.

UNITED STATES OF AMERICA SOUTHERN DISTRICT OF CALIFORNIA ss:

I, D. J. O'Leary Federal Prohibition Agent, for the Southern District of California, being sworn, do say that the foregoing information is true in substance and in fact.

D J O'Leary

Subscribed and sworn to before me this 29 day of March, A. D. 1922.

[Seal] Chas N Williams,
Clerk U. S. District Court Southern District of California.

By Edmund L Smith Deputy

[Endorsed]: No. 3948 U. S. DISTRICT COURT SOUTHERN District of CALIFORNIA SOUTHERN DIVISION. THE UNITED STATES vs. P. PIACENZA and FRANK MORETTI. INFORMATION For Vio. Sec. 21 & 25 Title II of the National Prohibition Act of October 28, 1919. FILED MAR 29 1922 CHAS. N. WILLIAMS, Clerk By Louis J. Somers Deputy

At a stated term, to wit, the January Term, A. D. 1922, of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the city of Los Angeles, on Wednesday, the 29th day of March, in the year of our Lord one thousand nine hundred and twenty two.

PRESENT: THE HONORABLE Oscar A. Trippet, DISTRICT JUDGE.

United States of America,)
 Plaintiff)
vs.) No. 3948 Crim. S. D
)
P. Piacenza and Frank Moretti)
 Defendants)

Mark L. Herron, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, having presented a verified Information in this cause; now, upon motion of said Mark L. Herron, Esq., it is by the court ordered that said Information be filed and that the bail of each defendant herein be fixed in the sum of \$1000.00.

At a stated term, to wit, the January Term, A. D. 1922, of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the City of Los Angeles, on Monday, the 10th day of April, in the year of our Lord one thousand nine hundred and twenty-two.

PRESENT: THE HONORABLE OSCAR A. TRIPET, District Judge.

United States of America,)
 Plaintiff)
vs.) No. 3948 Crim. S. D
)
P. Piacenza and Frank Moretti)
 Defendants)

This cause coming on at this time for arraignment and Plea of defendant P. Piacenza; Mark L. Herron, Esq., Assistant U. S. Attorney, appearing as counsel for the Government; defendant P. Piacenza being present in court with his attorney, A. E. T. Chapman, Esq., and defendant having been arraigned, thereupon states his name to be as given in the Information and waives the reading thereof; and, upon being required to plead, having interposed his plea of Not Guilty, it is by the court ordered that this cause be continued to May 23rd, 1922, for the trial of said defendant P. Piacenza and that this cause be continued to April 17th, 1922, for arraignment and plea of defendant Frank Moretti.

At a stated term, to wit, the January Term, A. D. 1922, of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the City of Los Angeles, on Friday, the 21st day of April, in the year of our Lord one thousand nine hundred and twenty-two.

PRESENT: THE HONORABLE Oscar A. Trippet, DISTRICT JUDGE.

United States of America,)
 Plaintiff)
vs.) No. 3948 Crim. S. D.
)
Frank Moretti, Defendant)

Upon ex parte motion of Mark L. Herron, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, it is by the court ordered that this cause be and the same is hereby dismissed, as to defendant Moretti.

4/21/501

At a stated term, to wit, the January Term, A. D. 1922, of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the city of Los Angeles, on Monday, the 1st day of May in the year of our Lord one thousand nine hundred and twenty two.

PRESENT: THE HONORABLE OSCAR A. TRIPPET, DISTRICT JUDGE.

This cause coming on at this time for arraignment and plea of defendant Frank Moretti; now, upon motion of Mark L. Herron, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, it is by the court ordered that this cause as to defendant Frank Moretti be and the same is hereby dismissed.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTH-
ERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

I, CHAS. N. WILLIAMS, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original JUDGMENT entered in the above entitled cause; and I do further certify that the papers hereto annexed constitute the JUDGMENT ROLL in said cause.

ATTEST MY HAND AND SEAL of said District Court this 5 day of May A. D. 1922.
[SEAL] CHAS. N. WILLIAMS, Clerk,
BY: Louis J. Somers, Deputy Clerk

[Endorsed] :

No. 3948 Cr. In the District Court of the United States for the Southern District of California Southern Division. United States of America, vs. P. Piazena, et al. JUDGMENT ROLL. Filed May 5 1922 Chas. N. Williams, Clerk By Louis J. Somers, Deputy Clerk. Recorded Min Book No. 43, 501; 44 page 37.

At a stated term, to wit: the January Term, A. D. 1923 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the City of Los Angeles, on Tuesday the 13th day of March, in the year of our Lord one thousand nine hundred and twenty-three.

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) No. 3948 Crim. S. D.
)
P. Piacenza, Defendant.)

This cause coming on at this time for trial of defendant P. Piacenza before this court and a jury to be impanelled herein; Mack Meader, Esq. and Mark L. Herron, Esq. Assistant United States Attorneys, appearing as counsel for the Government; defendant being present in court with his attorney A. E. T. Chapman, Esq.; L. Vaillancourt being also present in his official capacity as stenographic reporter of the testimony and proceedings, and counsel for the respec-

tive parties having announced their readiness to proceed with the trial of this cause, it is by the court ordered that this cause be proceeded with, and that a jury be impanelled herein, and thereupon the following twelve names were drawn from the jury box, to wit:

Thomas M. Campbell; Ray R. Thomas; Geo. Esmay; Ray Mitchell; Lee Chamberlain; Lewis R. McKesson; Henry W. Whitmarsh; Chas. P. Curran; Geo. W. Ritchey; Wm. F. Goble; Perce H. Curtis; and Elbert Bell, and said petit jurors having been called and sworn on voir dire and examined by the court and by counsel for the defendant for cause and passed for cause; and

Lewis R. McKesson having been peremptorily challenged by counsel for the defendant and by the court excused;

It is by the court ordered that the name of one more petit juror be drawn from the jury box, said juryman being Warren A. Lanz and said Warren A. Lanz having been called and sworn on voir dire and passed for cause by the court, it is by the court ordered that the petit jurors now in the box be sworn in a body as the jury to try this cause, said petit jurors as sworn being as follows, to wit:

THE JURY.

| | |
|-----------------------|-----------------------|
| 1. Thomas M. Campbell | 7. Henry W. Whitmarsh |
| 2. Ray R. Thomas | 8. Chas. P. Curran |
| 3. Geo. Esmay | 9. Geo. W. Ritchey |
| 4. Ray Mitchell | 10. Wm. F. Goble |
| 5. Lee Chamberlain | 11. Perce H. Curtis |
| 6. Warren A. Lanz | 12. Elbert Bell |

Now, at the hour of 11:12 o'clock A. M. the court declares a recess in this cause to the hour of three o'clock P. M., and

At the hour of 3:40 o'clock P. M. the court having reconvened and all being present as before; and

Anton R. Ragon having been called, sworn and having testified in behalf of the Government; and

In connection with his testimony there having been offered and admitted in evidence on behalf of the Government the following exhibits, to wit:

U. S. Ex. No. 1 - Galvanized iron still and can containing coil

U. S. Ex. No. 2 - Small copper still

U. S. Ex. No. 3 - Large copper still

U. S. Ex. No. 4 - Five gallon bottle containing liquor

U. S. Ex. No. 5 - Large funnel

U. S. Ex. No. 6 - Galvanized iron bucket containing hose, etc.

and

Wm. Y. Ballinger having been called, sworn and having testified in behalf of the Government; and cross examined by Attorney Chapman on behalf of the defendant; and

D. J. O'Leary having been called, sworn and having testified on behalf of the Government and cross examined by said A. E. T. Chapman, Esq. on behalf of the defendant; and

The Government having rested; and

The motion of said A. E. T. Chapman, Esq. for an

instructed verdict of not guilty to the charge of manufacturing liquor having been denied; and .

P. Piacenza having been called, sworn and having testified in his own behalf;

At the hour of 4:30 o'clock P. M. the court declares a recess in this cause to the hour of ten o'clock A. M. March 14, 1923.

At a stated term, to wit: the January Term, A. D. 1923 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the City of Los Angeles on Wednesday, the 14th day of March, in the year of our Lord one thousand nine hundred and twenty-three.

PRESENT: THE HONORABLE BENJAMIN F.
BLEDSOE, District Judge.

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) No. 3948 Crim. S. D.
)
P. Piacenza, Defendant.)

This cause coming on at this time for further trial of defendant herein before this court and a jury heretofore impanelled; Mack Meader, Esq., Assistant United States Attorney, appearing as counsel for the Government; defendant P. Piacenza being absent from court, and his attorney A. E. T. Chapman, Esq. being present; J. B. Faulkner being also present in his official capacity as stenographic reporter of the testimony and proceedings, it is by the court ordered at the

hour of ten twenty o'clock A. M., the jury being present, that a recess be taken for ten minutes; and

At the hour of ten-thirty o'clock A. M. the court having reconvened and all being present as before and defendant being present, and counsel for the respective parties having announced their readiness to proceed with the trial of this cause, it is by the court ordered that this cause be proceeded with, and

Defendant having resumed the witness stand and cross examined by Mack Meader, Esq. on behalf of the Government, and re-directly examined by A. E. T. Chapman, Esq. on behalf of the defendant and defendant having been examined by the court,

The defendant rests; and

Anton R. Ragon having been recalled to the witness stand in rebuttal and having testified on behalf of the Government; cross examined by Attorney Chapman and examined by the jurors; and

Wm. Y. Ballinger having been recalled to the witness stand and having testified for the Government and cross-examined by A. E. T. Chapman, Esq., on behalf of the defendant and examined by the jurors; and

D. J. O'Leary having been recalled to the witness stand and having testified for the Government and cross-examined by A. E. T. Chapman, Esq.; and

The Government having rested; and

Defendant having thereupon been recalled to the witness stand in his own behalf; and

At the hour of 11:30 o'clock A. M. the defendant having rested and the Government having rested; and

Mack Meader, Esq. having thereupon argued on behalf of the Government to the jury; and

At the hour of 11:35 o'clock A. M., A. E. T. Chapman Esq. having argued to the jury on behalf of the defendant; and

At the hour of 11:45 o'clock A. M. Mack Meader, Esq. having argued in rebuttal on behalf of the Government to the jury; and

The court having thereupon instructed the jury with respect to the law involved in this cause, the defendant's instructions refused by the court having been filed herein; and

At the hour of 12:05 o'clock P. M. Bailiff Henry Yonkin having been sworn to care for the jury during the deliberation of their verdict and the jury having thereupon retired to deliberate upon their verdict;

Now, at the hour of 12:15 o'clock P. M. the jury return into court and are asked if they have agreed upon a verdict, and the jury having replied that they have so agreed, are required to present the same, said verdict as presented and read by the clerk of the court being as follows, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, United States of America, Plaintiff vs. P. Piacenza and Frank Moretti, Defendants, No. 3948 Crim. S. D. We, the jury in the above entitled cause, find the defendant P. Piacenza guilty as charged in the first count of the Information and guilty as charged

in the second count of the Information. Los Angeles, California, March 14, 1923. Ray Thomas, Foreman.

and the verdict of guilty against defendant P. Piacenza having been presented and read as aforesaid, and ordered filed and entered herein, and defendant having interposed no legal excuse why judgment should not be pronounced at this time, the court pronounces sentence upon defendant P. Piacenza for the offence of which he stands convicted, namely, violation of the National Prohibition Act of October 28, 1919, and it is the judgment of the court that defendant P. Piacenza stand committed to the Orange County Jail for the term and period of ten (10) months on the first count and pay unto the United States of America a fine in the sum of one dollar on the second count; and, upon motion of said A. E. T. Chapman, Esq. defendant P. Piacenza is granted a five day stay of execution of sentence; and it is further ordered by the court on motion of Mack Meader, Esq. that the liquor and apparatus seized herein be turned over to the United States Marshal and by the said Marshal be destroyed.

48/169-170

You are instructed that evidence of circumstances must all concur to show that the defendant *committed* the crime, and such circumstances must all be inconsistent with any other rational conclusion than that the defendant is guilty, and must exclude, to a moral certainty, and to your entire satisfaction, the theory of innocence; and if the circumstances and evidence in this case can by you be reasonably be construed con-

sistently with the innocence of the defendant, it is your duty so to construe them and to acquit the defendant. You are instructed:

That in this case the prosecution must prove to you beyond a reasonable doubt, two things, viz.:

(1) That the crime charged in the Information was in fact committed.

(2) That the defendant and no other person committed the crime charged.

[Endorsed]: 3948 Cr. U. S. A. - vs. - P. Piacenza, Defendant's instructions refused. FILED MAR 14, 1923 Chas. N. Williams, Clerk, Edmund L. Smith, Deputy.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTH-
ERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

United States of America,)
 Plaintiff)
Vs.) No. 3948 Crim.S. D.
)
P. Piacenza and Frank Moretti)
)
 Defendants)

We, the Jury in the above-entitled cause, find the defendant P. Piacenza Guilty as charged in the FIRST COUNT of the Information and Guilty as charged in the SECOND COUNT of the Information.

Los Angeles, California, March 14th, 1923.

Ray Thomas,
FOREMAN.

FILED MAR 14, 1923

Chas. N. Williams, Clerk

Edmund L. Smith, Deputy.

In the District Court of the United States
IN AND FOR THE SOUTHERN DISTRICT OF
CALIFORNIA.

SOUTHERN Division.

UNITED STATES OF
AMERICA, Plaintiff,
vs. { No. 3948 Crim. S. D.
P. Piacenza Defendant . }

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original JUDGMENT entered in the above-entitled cause; and I do further certify that the papers hereto annexed constitute the JUDGMENT ROLL in said cause.

ATTEST my hand and the seal of said District Court, this 21st day of March A. D. 1923

(SEAL)

CHAS. N. WILLIAMS
Clerk.

By B. B. Hansen,
Deputy Clerk.

[Endorsed]:

No. 3948 Crim. In the District Court of the UNITED STATES for the SOUTHERN DISTRICT of California, Southern Division. United States of America, PLAINTIFF vs. P. Piacenza, Defendant. JUDGMENT ROLL Filed March 21st, 1923. CHAS. N.

WILLIAMS Clerk By B. B. Hansen Deputy Clerk
Recorded Min. Book No. 48 page 169

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA.

THE UNITED STATES,)
)
)
Plaintiff,)
vs.) MOTION IN ARREST
)
) OF JUDGMENT.
P. PIACENZA,)
)
)
Defendant.)
)
)
)

Now comes, P. Piacenza, the defendant in the above styled and numbered cause, and against whom verdict of guilty was rendered in said cause on the 14th, day of March, 1923, and moves the Court to arrest the judgment against him and hold for naught the verdict of guilty rendered against him for the following reasons:

I.

Because on the trial of this cause the evidence was insufficient to prove the venue, and the Court was without jurisdiction to pronounce the judgement.

II.

Because on the trial of the cause the evidence was insufficient to show jurisdiction in this Court to hear and determine this cause.

The defendant therefore prays that this motion be sustained and that the judgement of conviction against him be arrested and held for naught, and that he have all such orders as may be just or proper in the premises, and he will ever pray.

Theo. Gottsdanker

Attorney for Defendant.

[Endorsed]:

3948 Crim. IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA. THE UNITED STATES vs. P. PIACENZA MOTION IN ARREST OF JUDGEMENT. Recd copy Mar 30 - 1923 Mack Meader Asst U S Atty
FILED MAR 30 1923 CHAS. N. WILLIAMS,
Clerk By Louis J. Somers Deputy THEODORE GOTTSANKER ATTORNEY AND COUNSELOR AT LAW
311 - 312 Equitable Bank Building Los Angeles, California Phone 16002

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA.

THE UNITED STATES,)
vs.) Plaintiff,) MOTION TO SET
P. PIACENZA,) ASIDE AND VACATE
Defendant.) JUDGMENT.

Now comes, P. Piacenza, the defendant in and above styled and numbered cause, and against whom a verdict of *guilty* was rendered in said Cause on the 14th, day of March, 1923, and moves the Court to set aside and vacate the judgment against him and hold for naught the verdict of guilty rendered against him for the following reasons:

I.

Because on the trial of this cause the evidence was insufficient to prove the venue, and the Court was without jurisdiction to pronounce the judgment.

II.

Because on the trial of the cause the evidence was insufficient to show jurisdiction in this Court to hear and determine this cause.

The defendant therefore prays that this motion be sustained and that the judgment of conviction against

him be set aside and vacated and held for naught, and that he have all such other orders as may be just and proper in the premises, and he will ever pray.

Theo. Gottsdanker
Attorney for Defendant.

[Endorsed] :

3948 Crim. IN THE DISTRICT COURT OF THE
UNITED STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIF. THE UNITED STATES VS. P. PIACENZA MOTION TO SET
ASIDE AND VACATE JUDGMENT. Received
Copy Mar. 30 - 1923 Mack Meader, Asst U S Atty
FILED MAR 30 1923 CHAS. N. WILLIAMS,
Clerk Louis J Somers Deputy
THEODORE GOTTSDANKER ATTORNEY AND
COUNSELOR AT LAW 311 - 912 Equitable Bank Building
Los Angeles, California Phone 16002

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA
SOUTHERN DIVISION.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
P. PIACENZA,
Defendant.

NOTICE OF HEARING OF MOTIONS
TO SET ASIDE AND IN ARREST OF
JUDGEMENT.

To Joseph Burk, U. S. Attorney and Mack Meader
Ass't U. S. Attorney and to the above named
Plaintiff:

You and each of you will please take notice that the defendant will on the 9th day of April, 1923 at the hour of 2 P. M. or as soon thereafter as this matter can be heard by the Court, move the Honorable Court in the Department presided by the Hon. Benjamin F. Bledsoe for an order to vacate and set aside the judgment and the sentence against the defendant previously entered and to arrest said judgement.

The said motions will be based upon the records and files in the case and upon the grounds as set out in the written motion which has been previously been served upon you and filed with this Court.

Theo Gottsdanker
Attorney for Defendant

[Endorsed]: No. 3948 Criminal

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVIS. THE UNITED STATES VS. P. PIACENZA NOTICE OF MOTIONS. Recd Copy Mack Meader Asst U S Atty FILED APR 2 - 1923 CHAS N. WILLIAMS, Clerk By Chas. V. Rude Deputy THEODORE GOTTSANKER ATTORNEY AND COUNSELOR AT LAW 311 - 312 Equitable Bank Building Los Angeles, California Phone 16002

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,

UNITED STATES OF AMERICA,
)
)
)
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)
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)
)
Plaintiff,
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vs.
)
P. PIACENZA,
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Defendant.
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STIPULATION EXTENDING TIME
TO FILE AND SETTLE BILL OF EX-
CEPTIONS AND ORDER THEREON.

It is hereby agreed and stipulated by and between the above parties to the within entitled cause thru their respective counsel, that the defendant may have the time in which to file and settle the bill of exceptions, of the exceptions taken to the order of the Court in denying his motions to vacate the judgment and verdict in the cause and in denying the motion in arrest of the judgment, enlarged up to and including the 17th. day of May, 1923.

Mack Meader

Attorney for Plaintiff.

Theo Gottsdanker

Attorney for Defendant.

Upon the filing of the above stipulation, it is hereby ordered that the defendant may have his time in which

to prepare and serve the bill of exceptions to the exceptions taken to the *order* of the Court denying defendant's motions to vacate and set aside the judgment of the Court and the verdict and in arrest of the judgment in the above entitled *cause*, *enlarged* up to and *an* including April 24, 1923.

Bledsoe

Judge of U. S. District Court.

[Endorsed]:

No 3948 Criminal IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION UNITED STATES OF AMERICA Plaintiff vs. p. Piacenza Defendant STIPULATION FILED APR 17 1923 CHAS. N. WILLIAMS Clerk By Chas. V. Rude Deputy THEODORE GOTTS-DANKER ATTORNEY AND COUNSELOR AT LAW 311-312 Equitable Bank Building Los Angeles, California Phone 16002

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA
SOUTHERN DIVISION.

THE UNITED STATES OF
AMERICA,

Plaintiff,

vs.

P. PIACENZA,

Defendant.

BILL OF EXCEPTIONS TO ORDERS
DENYING MOTIONS IN ARREST OF
JUDGMENT AND TO VACATE AND
SET ASIDE JUDGMENT.

Be it known, that on the 9th. of April, 1923 the motion of the defendant P. Piacenza in arrest of the judgment having been denied and the said defendant excepted to the order of the Court in denying said motion, and the defendant's exception to the ruling and the decision of the court on said motion is hereby duly allowed, and this bill of exceptions settled and allowed.

Be it further known, that on the said 9th. day of April, 1923 the motion of the defendant, P. Piacenza to vacate and set aside the judgment and verdict hav-

ing been denied and the said defendant excepted to the order of the Court in denying said motion, and defendant's exception to the ruling and the decision of the court on said motion is hereby duly allowed, and this bill of exceptions settled and allowed. The ruling of the Court in so denying said motion was based upon the ground that the matter could not be raised in such fashion and that the question of Venue was substantially proven at the trial. B. F. B. O K
Meader

Done in open court this 23rd day of April, 1923.
Bledsoe
Judge.

[Endorsed]:

No. 3948 Criminal IN THE DISTRICT COURT
OF THE UNITED STATES FOR THE SOUTHERN
DISTRICT OF CALIFORNIA SOUTHERN
DIVISION UNITED STATES, Plaintiff, vs. P.
PIACENZA, Defendant. Settled BILL OF EXCEPTIONS
Recd Copy Apr. 23 - 1923 Mack
Meader Asst U. S Atty FILED APR 23 1923
CHAS. N. WILLIAMS, Clerk By Chas. V. Rude
Deputy
THEODORE GOTTSANKER ATTORNEY AND
COUNSELOR AT LAW 311 - 312 Equitable Bank Building
Los Angeles, California Phone 16002

(*Testimony of Antone R. Ragon.*)

LOS ANGELES, CALIF., TUESDAY, MARCH 13, 1923; 3:30 P. M.

(Jury impaneled and sworn.)

ANTONE R. RAGON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Q BY THE CLERK: What is your name?

A Antone R. Ragon

Q BY MR MEADER: What is your occupation?

A Investigator, District Attorney's office.

Q Are you a special deputy sheriff?

A Yes sir.

Q Were you such about the 29th of November, 1921?

A Yes sir.

Q Do you know the premises here? Withdraw that. Do you know the defendant in this case Mr. Piacenza?

A I saw him.

Q Did you see him on or about the 29th day of November, 1921?

A Yes sir.

Q Did you see him in Belvedere?

A Yes sir.

Q On Riverside street?

A Yes sir.

Q Now, who was with you at the time, Mr. Ragon?

A Mr Ballinger.

(*Testimony of Antone R. Ragon.*)

Q Constable of Belvedere?

A Yes sir.

Q Just tell the jury what occurred the first time—Withdraw that. Was there anyone else with you besides Mr Ballinger?

A When I first saw him, no.

Q Now, when you first saw him where was he and what was he doing, and what was said or done, if anything?

A Why, he just got home. He had been out in his machine and had just got home. Me and Mr Ballinger was waiting for Mr O'Leary to come, and we told him --

Q That was at the premises on Riverside street, Belvedere?

A Yes sir.

Q Let me ask you, had you ever been around those premises before that occasion?

MR. CHAPMAN: Object to that as incompetent, irrelevant, immaterial; not within the issues of the case; no proper foundation laid.

THE COURT: Overruled.

Q BY MR MEADER: Just answer the question.

A Why, yes, I had driven by there several times.

Q Now, do you know whether or not on or about the 29th day of November, 1921, there was a search warrant issued for the premises?

MR. CHAPMAN: Object to that as not being the best evidence.

THE COURT: Overruled.

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA
SOUTHERN DIVISION.

UNITED STATES OF)
AMERICA,)
 Plaintiff,)
vs.) ASSIGNMENT
) OF ERRORS.
P. PIACENZA,)
)
 Defendant.)
)

And now comes P. Piacenza, the plaintiff in error and in connection with his petition for a writ of error says that in the record, proceedings, and judgment aforesaid, error has intervened to his prejudice, to wit:

First: The Honorable Benjamin F. Bledsoe, Judge of the District Court of the United States, erred in denying the defendant's motion to direct the jury to find the defendant not guilty on the second count of the information.

Second: The Court erred in not directing the jury at the close of the Government's case to find the defendant not guilty.

Third: The Court erred in not directing the jury to find the defendant not guilty at the close of the whole case.

Fourth: The verdict of the jury is not supported by any competent evidence in the record.

Fifth: The Court erred in entering the judgement upon the verdict in this case.

Sixth: The Court erred in overruling and denying the motion of the defendant in arrest of judgment.

Seventh: The Court erred in overruling and denying the motion of the defendant to set aside and vacate the judgment entered *against* him

Eight: The judgment of the Court is contrary to law.

Wherefore said plaintiff in error prays that the said judgment of the District Court may be reversed and held for naught.

Theo Gottsdanker
Attorney for Petitioner.

[Endorsed]:

No. 3948 Criminal IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION. UNITED STATES OF AMERICA Plaintiff vs. P. PIACENZA Defendant. ASSIGNMENT OF ERRORS Recd Copy April 11th 1923 Mack Meader. FILED APR 11 1923 CHAS. N. WILLIAMS, Clerk By Louis J. Somers Deputy THEODORE GOTTSANKER ATTORNEY AND COUNSELOR AT LAW 311 - 312 Equitable Bank Building Los Angeles, California Phone 16002

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA
SOUTHERN DIVISION.

UNITED STATES OF)
AMERICA,)
 Plaintiff,)
 vs.) PETITION FOR
P. PIACENZA,) WRIT OF ERROR.
 Defendant.)
))
))

To the Honorable Benjamin F. Bledsoe, Judge of the District Court of the United States, for the Southern District of California, Southern Division:

And now comes P. Piacenza, the defendant in the above entitled cause, and feeling himself aggrieved by the verdict of the jury and the judgement of the District Court of the United States for the Southern District of California, Southern Division entered on the 14th. day of March, 1923, hereby petitions for an order allowing him said defendant to prosecute a writ of error from the United States Circuit Court of Appeals of the Ninth Circuit to the District Court of the United States for the Southern District of California, Southern Division; that said writ of error may be made a supersedeas and that your petitioner be released on bail in an amount to be fixed by the judge

thereof, pending the final disposition of said writ of error. Assignment of errors is filed with this petition.

P. Piacenza
By Theodore Gottsdanker
His Attorney.

[Endorsed] :

No 3948 Criminal. IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION UNITED STATES OF AMERICA, Plaintiff, vs. P. PIACENZA, Defendant. PETITION FOR WRIT OF ERROR. Recd Copy Apr 11-1923 Mack Meader FILED APR -- 1923 CHAS. N. WILLIAMS, Clerk By Louis J Somers Deputy

THEODORE GOTTSANGER ATTORNEY AND COUNSELOR AT LAW 311-312 Equitable Bank Building Los Angeles, California Phone 16002

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES)
OF AMERICA,) ORDER ALLOWING
Plaintiff,) WRIT OF ERROR
vs.) AND ADMITTING
P. PIACENZA,) DEFENDANT TO
Defendant.) BAIL.

Let a Writ of Error issue from the United Circuit Court of Appeals for the Ninth Circuit to the United States District Court for the Southern District of California, Southern Division as prayed for in the

petition of the said defendant, P. Piacenza; and that a citation be issued to the defendant in error.

And it now appearing that a citation has been served in the cause, it is now ordered that the writ of error, allowed as above stated, operate as a supersedeas, and the defendant be admitted to bail, upon furnishing a bond in the penal sum of Five Thousand Dollars conditioned according to law to be approved by me, and that the cost bond is hereby fixed in the sum of Two hundred Fifty Dollars.

Bledsoe

Judge.

[Endorsed]:

No 3948 Criminal IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION. UNITED STATES OF AMERICA Plaintiff vs. P. PIACENZA, Defendant. ORDER ALLOWING WRIT OF ERROR, etc. Recd Copy Mack Meader Apr. 11-1923 FILED APR 11 1923 CHAS. N. WILLIAMS, Clerk By Chas. V. Rude Deputy THEODORE GOTTSANKER ATTORNEY AND COUNSELOR AT LAW 311-312 Equitable Bank Building Los Angeles, California Phone 16002

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

THE UNITED STATES)
OF AMERICA,)
vs. Plaintiff,) BAIL BOND AND
P. PIACENZA,) BOND FOR COSTS.
Defendants.)

KNOW ALL MEN BY THESE PRESENTS,
That I, P. Piacenza of the County of Los Angeles,
State of California, as principal, and Pablo Soto, and
Albert Borzicchi and Veneranda Borzicchi, his wife all
of the County of Los Angeles State of California
as sureties, are held and firmly bound unto the United
States of America in the full and just sum of Five
Thousand Two Hundred Fifty Dollars (\$5,250.00) to
be paid to the United States of America, to which pay-
ment well and truly we bind ourselves, our heirs,
executors and administrators jointly and severally by
these presents.

Sealed with our seals and dated this....day of
April, 1923.

Whereas, Lately on the 14th day of March, 1923
at the January Term of 1923 of the District Court
of the Southern Division of California, Southern Dis-
trict, in a cause pending in said Court, between the
United States of America, Plaintiff, and P. Piacenza,
Defendant, a judgment and sentence was rendered
against said P. Piacenza, and said P. Piacenza ob-
tained a writ of Error from the United States Circuit

Court of Appeals for the Ninth Circuit to the said United States District Court to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be *an* appear in the said Court thirty days from the date thereof, which citation has been fully served.

Now the condition of said obligation is such, that if the said P. Piacenza shall appear in the United States Circuit Court of Appeals for the Ninth Circuit when said cause is reached for argument or when required by law or rule of said Court, and from day to day thereafter in said Court until said cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by the said Court of Appeals in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct and shall further pay all of the costs of the clerk for preparing the record as provided by law up to and not exceeding the sum of two hundred fifty Dollars, if the sentence and judgment against him shall be affirmed, and if he shall appear for trial in the District Court and abide by and obey all orders of said Court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise to remain in full force, virtue and effect.

It is also the condition of the above bond that the defendant will pay all or any costs of the Clerk not

to exceed the sum of Two hundred fifty dollars in either case whether the judgment and sentence appealed from is affirmed or reversed by the said United States Circuit Court of Appeals for the Ninth Circuit.

P. Piacenza

Pablo Soto

Albert Borzicchi

Veneranda Borzicchi

SOUTHERN DISTRICT OF CALIFORNIA, SS.

Pablo Soto and Albert Borzicchi and Veneranda Borzicchi being duly sworn, each for himself deposes and says that he is a householder is said District and is worth the sum of Five Thousand Two Hundred Fifty Dollars of property exempt from execution and over and above all debts and liabilities.

(Seal)

Pablo Soto

Albert Borzicchi

Veneranda Borzicchi

Subscribed and sworn to before me 20 day of April, 1923

Chas N Williams Clerk

By Louis J Somers deputy

Examined and recommended for approval as provided in Rule 29.

Theo Gottsdanker

ATTORNEY

The form of the foregoing Bond and the sufficiency of the sureties thereto is hereby approved.

Wm P James

Judge

Dated: 21 day of April, 1923.

Approved as to form

R B Camarillo Asst U. S. Atty.

[Endorsed]:

No. 3948 Criminal

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

THE UNITED STATES vs. P. PIACENZA BOND on appeal & for costs

FILED APR 21 1923 CHAS. N. WILLIAMS,
Clerk By Chas. V. Rude Deputy

THEODORE GOTTSDANKER ATTORNEY AND
COUNSELOR AT LAW 311-312 Equitable Bank Building
Los Angeles, California Phone 16002

UNITED STATES OF AMERICA

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA

United States of
America

vs.

P. Piacenza

} CLERK'S OFFICE
Criminal
No. 3948
} PRÆCIPÉ

TO THE CLERK OF SAID COURT:

Sir:

Please issue Judgment Roll, Defendant's Notice of Motions Defendant's Motion to set aside and vacate Judgment Defendant's Motion in Arrest of Judgment Order Allowing Writ of Error Assignment of Errors Petition for Writ of Error Stipulation Extending Time to file and settle Bill of Exceptions. Bill of Exceptions, Writ of Error Transcription from Reporter's Transcript Pages 1 to 2 inclusive. Citation Bail Bond & Cost Bond

Theo Gottsdanker
Atty for Defendant.

[Endorsed] :

Criminal No. 3948 U. S. District Court SOUTHERN DISTRICT OF CALIFORNIA United States vs. P. Piacenza
PRÆCIPÉ

FILED MAY 14, 1923 CHAS. N. WILLIAMS,
Clerk, B B Hansen Deputy

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA
SOUTHERN DIVISION.

UNITED STATES OF)
AMERICA,)
vs. Plaintiff,)
P. PIACENZA,) CLERK'S
Defendant.) CERTIFICATE.

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 41 pages, numbered from 1 to 41 inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by plaintiff in error and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the judgment roll, notice of motions, motion to set aside and vacate judgment, motion in arrest of judgment, order allowing writ of error, assignment of errors, petition for writ of error, stipulation extending time to file and settle bill of exceptions, bill of exceptions, writ of error, citation, bond, transcription from reporter's transcript pages 1 and 2 inclusive and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on writ of error amount to..... and that said amount has been paid me by the plaintiff in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this.....day of May, in the year of our Lord One Thousand Nine Hundred and Twenty-three, and of our Independence the One Hundred and Forty-seventh.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in and
for the Southern District of California.

By

Deputy.

